IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

MACA.No. 912 of 2004()

OPMV.2104/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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: APPELLANT/2ND RESPONDENT:

ANANDAKUTTAN, S/O. PURUSHOTHAMAN,
KARIYIL HOUSE, KUMARAKOM NORTH,
KUMARAKOM VILLAGE, PALLICHIRA, KOTTAYAM DISTRICT.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS: PETITIONERS & RESPONDENTS:
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1. SAJITHA, W/O. LATE GOPIDAS,
RAHUL BHAVAN (THAICHIRA), KAVANATTINKARA KARA,
KUMARAKOM VILLAGE, KOTTAYAM TALUK.

2. GRESHMA (MINOR), D/O. LATE GOPIDAS,
RAHUL BHAVAN (THAICHIRA), KAVANATTINKARA KARA,
KUMARAKOM VILLAGE, KOTTAYAM TALUK.

3. RAHUL DAS (MINOR), S/O. LATE GOPIDAS,
RAHUL BHAVAN (THIACHIRA), KAVANATTINKARA KARA,
KUMARAKOM VILLAGE, KOTTAYAM TALUK (THE MINOR
PETITIONERS ARE REPRESENTED BY THE 1ST PETITIONER
WHO IS THEIR MOTHER LEGAL GUARDIAN AND NEXT
FRIEND).

4. LAKSHMI, W/O. RAGHAVAN,
THAICHIRA HOUSE, VIRUPPUKALA, CHEEPUNKAL,
AYMANAM VILLAGE, KOTTAYAM.

5. RAGHAVAN, S/O. LATE KUNJAN,
THAICHAIRA HOUSE, VIRUPPUKALA,
CHEEPUNKAL, AYMANAM VILLAGE, KOTTAYAM.

6. K.R. KUTTAPPAN @ APPU, S/O. RAMAN,
KALATHIL HOUSE, KUMARAKOM NORTH,

KUMARAKOM VILLAGE, KOTTAYAM TALUK.

7. NEW INDIA ASSURANCE CO.LTD.,
KOTTAYAM.

BY ADV. SRI.KKM.SHERIF
SRI.A.A.ZIYAD RAHMAN
SRI.JACOB ABRAHAM
SRI.T.K.KOSHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON 27/11/2007 DELIVERED THE FOLLOWING:

ORDER ON IA NO.2063/2004

DISMISSED.

27/11/2007

SD/- K.S. RADHAKRISHNAN, JUDGE.

SD/- T.R. RAMACHANDRAN NAIR, JUDGE.

// TRUE COPY //

P.S. TO JUDGE

K.S. Radhakrishnan &
T.R. Ramachandran Nair, JJ.

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M.A.C.A.NO.912 OF 2004

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Dated this the 27th day of November, 2007.

JUDGMENT

T.R. Ramachandran Nair, J.

This appeal is field by the driver of the offending vehicle. The accident occurred on 21.11.2000 in which one Gopidas who was a Police Constable, while walking through the road, was hit by the vehicle, viz. KL5C/9751. The appellant herein was the second respondent in the case, the first respondent before the Tribunal being the owner of the vehicle. Appellant as well as the owner had remained ex-parte and the insurer alone contested the matter, by filing a petition under Section 170 of the Motor Vehicles Act.

2. As per the award, the Tribunal granted total compensation of Rs.7,08,000/- further directing the insurer to deposit the amount. It was also ordered that insurer will be entitled to recover the amount from the owner of the vehicle. The Tribunal accepted the contention of the insurer that the driver had no valid driving licence on the date of the accident, by relying upon Ext.B1, copy of the charge in Crime No.150 of 2000 and Ext.B2,

copy of the policy.

3. Learned counsel for the appellant submitted that this is a case where the approach made by the Tribunal was entirely wrong. It is submitted that the burden was heavy on the insurer to prove that the insured has committed breach of the conditions of the policy which led to the accident. It is submitted that unless there is proof that there had been willful breach of the conditions, the Tribunal could not have entered a finding in favour of the insurance company. Learned counsel relied upon the decisions of the Apex Court reported in **United India Insurance Co. Ltd. v. Lehru** (2003 (2) KLT 97 (SC)), **National Insurance Co. Ltd. v. Swaran Singh** (2004 (1) KLT 781 (SC)) and **Lal Chand v. Oriental Insurance Co. Ltd.** (2006 (4) KLT 17 (SC)).

4. Learned counsel for the insurance company contended that as there is no proof that the driver had any valid licence at the time of the accident, going by the decision of the Apex Court reported in **National Insurance Co. Ltd. v. Kusum Raj** (2006 (2) KLT 300 (SC), the Tribunal was right in rendering the impugned judgment.

5. A reading of the memorandum of appeal shows that the appellant

has not raised any plea that he was having a valid licence on the date of the accident. It is a case where he remained ex-parte before the Tribunal. Even in this appeal, the driving licence, if any, has not been produced. In spite of the above factual matrix, learned counsel for the appellant contended that the finding rendered by the Tribunal simply on the basis of Ext.B1 charge, is not correct. It is further contended that the Tribunal ought to have found that the insurance company has not discharged the burden cast on them for proving the plea of absence of driving licence and no steps were taken against the appellant for production of the driving licence.

6. The decisions of the Apex Court, viz. ***United India Insurance Co. Ltd. v. Lehru*** **[**2003 (2) KLT 97 (SC)], ***National Insurance Co. Ltd. v. Swaran Singh*** **[**2004 (1) KLT 781 (SC)] and ***Lal Chand v. Oriental Insurance Co. Ltd.*** **[2006** (4) KLT 17 (SC)] relied upon by the learned counsel for the appellant dealt with cases where the driver was holding a driving licence which was found to be fake later. It is in these circumstances the question was examined as regards the burden of proof on the part of the insurance company. Their Lordships held that the insurer

cannot deny its liability on the ground that the driving licence of the driver of the vehicle involved in the accident was fake. Only where the insurance company proves that the owner/insured was aware or had noticed that the licence was fake, and still permitted that person to drive the vehicle, the insurance company would be absolved of its liability. The facts of the case reported in ***United India Insurance Co. Ltd. v. Lehru*** **[**2003 (2) KLT 97 (SC)] shows that the driver of the vehicle therein had produced his original licence before the Tribunal. The insurance company attempted to prove that the licence bearing such number had actually been issued in the name of another person and not in the name of the driver of the offending vehicle. It is in these circumstances, the legal question was examined. We find that the facts available herein are totally different.

7. The question was elaborately considered in ***National Insurance Co. Ltd. v. Swaran Singh*** [2004 (1) KLT 781 (SC)]. Therein, it was held that the burden to establish breach on the part of the owner of the vehicle lies on the insurance company.

8. The dictum laid down in the above decision was considered by the Apex Court in **National Insurance Co. Ltd. v. Kusum Rai** [2006 (2)

KLT 300 (SC)]. Their Lordships held in paragraph 11 as follows:

> "This court in Swaran Singh (supra) clearly laid down that the liability of the insurance company vis-a-vis the owner would depend upon several factors. the owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle."

The facts of the case considered in ***National Insurance Co. Ltd. v. Kusum Rai*** [2006 (2) KLT 300 (SC)] shows that in that case the driver had only a licence to drive light motor vehicles. But at the crucial time he was driving a jeep which was being used as a taxi; a commercial vehicle. The driver had no licence to drive such a vehicle. It is in these circumstances their Lordships examined the question and it was held in paragraph 13 that "in a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not." Their Lordships were of the view that the insurance company, on the facts of the case, was not liable to pay the claim amount, as the driver was not possessing a valid licence.

9. In this case, as we have noticed earlier, the insurance company had clearly pleaded that there was no valid licence for the driver. They

relied upon Exts.B1 and B2 in support of the plea. There was no other evidence before the Tribunal. Therefore, the Tribunal was well within its rights in accepting the contention of the insurance company . The insurance company has clearly discharged its burden to allege and prove that there was no valid licence for the driver.

10. In this appeal, learned counsel for the appellant has produced as additional evidence, true copy of the judgment in C.C. No.1094/2001 on the file of the Judicial Magistrate of the First Class III, Kottayam, to contend that Ext.B1 has no significance, as the criminal case had ended in an acquittal. A reading of the judgment of the learned Magistrate shows that PWs.4 to 8 who were examined by the prosecution to prove the occurrence, turned hostile to the prosecution. They deposed before the court that at the time of the accident, the accused was not driving the vehicle. It is in these circumstances, the case ended in an acquittal. Therefore, it does not support the plea raised by the appellant herein, regarding the burden of proof of the insurer.

11. For all these reasons, we repel the contentions raised by the appellant. The appeal is dismissed.

M.A.C.A. No.1112/2007, heard along with this, is an appeal filed by the owner of the vehicle. We have remanded the matter to the Tribunal by a separate judgment to consider the question raised by the owner that on the date of the accident he was not the real owner of the vehicle, as the vehicle was already been transferred. It is made clear that the remand therein being only to consider the said question, the findings rendered by us herein would not affect the contentions of the parties.

(K.S. Radhakrishnan, Judge.)

(T.R. Ramachandran Nair, Judge.)

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